

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

*v.*

Case No. 07-CR-243(CNC)

HILDA ALAYETO,

Defendant.

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**DEFENDANT ALAYETO'S MOTION IN LIMINE REGARDING  
RECORDED, CUSTODIAL STATEMENT(S) OF DEFENDANT**

Hilda Alayeto, through her attorney Thomas G. Wilmouth, and pursuant to FED. R. EVID. 401, 402 and 403, moves the Court to enter an Order directing the government to redact from the alleged recorded, custodial statement of the defendant, and any transcript made thereof, any references to the probation status of the defendant and her previous knowledge of *Miranda* warnings.

As grounds therefore, the defendant asserts the following:

1. In the "United States' Trial Memo" filed today [R. 87], the government indicates that it intends to introduce defendant Alayeto's recorded statement to Milwaukee Police Detective Harold Young in it's case-in-chief. *See*, United States Trial Memo, pp. 2-3. The government's submission indicates the relevancy of the

statement is that Alayeto volunteered that drugs recovered in the investigation of this case belonged to her. *See*, United States Trial Memo, p. 2.

2. The majority of the two compact disc copies of the recorded, custodial statement(s) provided to the defense are barely audible. However, defense counsel is able to determine that both the arrestee and Detective Young make multiple references to the probationary status of the arrestee at the following metered portions of the recording: 440-445; 608; 627-650; 738-743; and 859-900. There may be more references that are inaudible to counsel. Evidence of the probationary status of the defendant has no tendency to make the existence of any fact that is of consequence to the determination of this case more probable or less probable than it would be without such evidence such that this evidence is not relevant. *See*, FED. R. EVID. 401. Evidence which is not relevant is not admissible. *See*, FED. R. EVID. 402.

3. Defense counsel is able to determine from the barely audible tape that Detective Young and the arrestee make reference to the arrestee having had *Miranda* warnings previously provided to her, implying one or more prior arrests, at metered portion 300 of the recording. Magistrate Judge William E. Callahan, Jr., without objection by the defense, has previously determined that the recorded, custodial statement is admissible because it was not given in contravention of *Miranda v. Arizona*, 384 U.S. 436 (1966), and so there will be no dispute at trial on

this point. Evidence that the defendant has been previously provided her *Miranda* warnings has no tendency to make the existence of any fact that is of consequence to the determination of this case more probable or less probable than it would be without such evidence such that this evidence is not relevant. *See*, FED. R. EVID. 401. Evidence which is not relevant is not admissible. *See*, FED. R. EVID. 402.

4. The government has indicated to defense counsel that it would be willing to redact those portions of the custodial, recorded statement at issue, and suggesting cutting out bulk portions of the recorded statement for that purpose, presumably since the government is only interested in the alleged admission of the ownership of the controlled substances at issue. However, the defense contends that the alleged statement of the defendant should be heard and considered by the jury in it's entirety, less the references sought to be excluded herein. If the government counters that references to the probationary status of the defendant and the previous reading to her of *Miranda* warnings thereby become relevant, the defense argues that this evidence should be excluded because it has substantial danger of unfair prejudice to the defendant's case and misleads the jury. *See*, FED. R. EVID. 403.

Dated at Milwaukee, Wisconsin this 27th day of May 2009.

Respectfully submitted,

**/s/ Thomas G. Wilmouth**

Thomas G. Wilmouth, Bar #1011746

Counsel for Hilda Alayeto

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